

CIVIL SERVICE COMMISSION MINUTES

June 19, 2002

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Roy Dixon
Sigrid Pate
Mary Gwen Brummitt

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
June 19, 2002

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
2,3,6,9,11,12,16,17,	10,18	7	

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Austin: Everett Bobbitt, Esq. on behalf of **Stephen Maxin**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

B. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of: **Karen Abbott, Allen Alejandro, Lisa Almanza, Troy Batton, Arwen Emily Daum, Kelli Gibbs, Maribel Herrera, Nailah Kathrada, Jamie Lee, Paul Roberts, Bounma Sanmur, Ignacio Santos, Kalela Scott, Jonathan Wadley**, Correctional Deputy Probation Officers I; **Sharon Epps and Stacy Slaten**, Correctional Deputy Probation Officers II, appealing Orders of Removal and Charges from the Department of Probation. (Interim verbal report.)

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of May 15, 2002.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin: **Tracy Lynn Moe**, former Deputy Sheriff-Courts, appealing an Order of Termination and Charges from the Sheriff's Department. (See attached memo and allow Executive Officer to give verbal input.)

Larry Cook, Executive Officer, spoke to the Commission regarding this item, as well as item No. 3 below. He explained that recently a court tentatively ruled in favor of an appellant regarding a timeliness issue that had previously come before the Commission. Although the court case will be continued, and argument heard from both sides, Mr. Cook wanted the Commission to be aware of the court's current ruling. He also recommended that Item No. 2 and Item No. 3 be addressed separately. Ralph Shadwell, Sr. Deputy County Counsel, advised that the Commission should hold to the standards of the Velez decision, which is a published case regarding a late filing of an appeal.

Appellant addressed the Commission, explaining that she thought her appeal was timely, but miscalculated the days, having confused "calendar" days with "business days", which rendered her appeal 1 day late.

The Department, represented by Robert Faigin, Esq., countered by pointing out to the Commission that the Order of Termination very clearly states that Appellant had 10 calendar days in which to appeal. Mr. Faigin also explained that Appellant's "good cause" was proffered orally, and she has not submitted any reasons in written form.

Motion by Dixon that Commission find good cause for this late filing and accept the confirmation of assignment for hearing on this matter. Seconded by Pate. Carried.

AYES: Austin, Dixon, Pate
NOES: Newman, Brummitt
ABSTENTIONS: None

3. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Thanh My D. Nguyen**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation. (See attached memo and allow Executive Officer to give verbal input.)

Wendell Prude, SEIU Local 2028, representing Appellant, explained that SEIU staff creates a binder for an employee when a Notice of Intent is received. On April 22, 2002, Appellant took the Order of Termination into Local 2028, as well as an Extension of Administrative Leave for the period of April 16th through April 22nd, 2002. At one point the two documents were stapled together and placed into Appellant's binder. After realizing that this particular employee had not filed an appeal with the Commission, SEIU searched for the Order of Termination and found it stapled to the back of the Extension of Administrative Leave. Immediately thereafter, an appeal was filed with the Commission.

Rosario Rull, representing the Probation Department assured the Commission that each document addressed above was personally served separately. She acknowledged that this employee was part of a large group of appellants and that perhaps SEIU's clerical error could be justified. The Department notes that Appellant complied with her part of the timeliness issue by immediately taking the Order of Termination into Local 2028's offices on the same day she was personally served.

Mr. Shadwell offered case law in which a similar clerical error occurred and the Court ruled in favor of that appellant.

Commissioner Newman noted that on item nos. 2 and 3, there was a difference in the Order provided by the Departments. One Order advised of "10 calendar days", the other Order referred to "10 days".

Larry Cook, Executive Officer explained that the Glossary of Terms, contained in Rule XVII of the Civil Service Rules, defines days as "calendar days". Commissioner Newman pointed out that somewhere there has to be a point at which it is understood that non-compliance is non-compliance. He emphasized that rules should be followed exactly so as to avoid the position of making a judgment call.

Motion by Dixon that Commission find good cause for this late filing and accept the confirmation of assignment for hearing on this matter. Seconded by Brummitt. Carried.

4. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Rosemarie Albano**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

5. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Steven Yamasaki**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

DISCIPLINES

Findings

6. Commissioner Austin: Everett Bobbitt, Esq. on behalf of **Stephen Maxin**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

Prior to the Findings and Recommendations being rendered, Robert Faigin, Esq., representing the Sheriff's Department addressed the Commission. He explained that the issue herein is whether demotion is the appropriate level of discipline in this matter. He asked the Commission to consider whether this employee should be allowed to remain as a supervisor and role model.

Everett Bobbitt, on behalf of Appellant, stated before the Commission that it is the Department's duty to be honest with the Commission, fair to its employees, and should always be held to a high standard. Thereupon, Commissioner Austin rendered his Findings:

FINDINGS AND RECOMMENDATIONS:

Employee is charged with Cause I - insubordination (use of Sheriff's patrol vehicle for personal use after being told that this was not permitted to do so); Cause II - insubordination; Cause III - (not dressed in full uniform as ordered to by supervisor); Cause IV - insubordination (responding from a location off beat and not logged on to the Mobile Dispatch Computer); Cause V - inefficiency; Cause VI - willful misconduct (use of patrol vehicle while on vacation time off; Cause VII - acts which are incompatible with and/or inimical to the public service.

Employee has been a Patrol Sergeant in the Sheriff's Department for approximately 10 years and has been employed by the Department for

approximately 27 years, currently assigned to the Alpine Substation. Employee has no record of prior discipline and in the past five years, none of his individual performance ratings were below "standard". He had many "above standard" and "outstanding" ratings, and introduced three reports of Exemplary Performance. After the Department agreed to amend some portions of the charges, Employee admitted all of the facts set forth and only contested the level of discipline imposed on him.

Testimony at the hearing revealed that the Alpine Substation is a small outlying station with a casual atmosphere and it was common for personnel to wear casual clothing. However, it was more important that patrol deputies be in full uniform than it was for administrative personnel. The Substation commander, Lt. Linda Fulton admitted to occasionally responding to service calls in casual clothing. It was common for deputies to make minor departures from their beat without obtaining prior approval, occasionally running a personal errand. There was an unwritten "family first policy" at the Substation and employees were given flexibility to deal with family matters as long as their job responsibilities were covered. Nevertheless, according to a co-worker, Employee "pushed the envelope".

While Employee admitted the essential facts of the charges, he offered the following explanations at the hearing in mitigation thereof:

- A. Employee testified that personal use of the patrol vehicle was common practice. Admonition against such personal use was done with a wink and a nod.
- B. Employee took the patrol vehicle home on only one occasion.
- C. While not in full uniform, Employee was wearing his uniform pants with a polo style shirt containing the Sheriff's Department emblem.
- D. Employee testified that it was common practice for sergeants and Sheriff's personnel of high rank to turn off the Mobile Dispatch Computers to conserve their battery life.
- E. With regard to picking up his daughter from school, thereby leaving his beat, Employee testified that his conduct was within the accepted practice of the Substation.
- F. As a result of extraordinary circumstances, Employee's use of a patrol vehicle while on vacation was due to his personal vehicle being broken down and towed. He borrowed the patrol vehicle for approximately 30 miles, not 129 miles alleged by the Department.

As Employee admitted the essential facts of the charges, the sole question before the Hearing Officer was the appropriateness of the discipline imposed. It appeared that the demotion was a permanent diminishment of his position based on the Department's view that Employee is unfit for leadership. While some notice was provided to Employee through memos, it appears from the evidence that the Department was giving mixed signals. The chain of command was not so concerned with the type of conduct at issue, as it was with the degree to which Employee engaged in it. Accordingly, this creates a more ambiguous standard. Since there are no prior disciplinary warnings to him whatsoever, this is a classic case for the use of progressive discipline.

The apparent fact that Employee's conduct was consistent with the practices of his substation provided only a limited excuse. Additionally, because of his leadership role, the perception of his conduct by other deputies was as important as his actual conduct. Employee was found guilty of Causes I, II, III, IV, V, and VI. It is therefore recommended that Employee's discipline be modified from demotion to a one-step pay reduction equivalent to a thirty (30) calendar-day suspension in the classification of Sheriff's Sergeant,

minus pay and benefits differential and interest from the date of demotion to the date of reinstatement to Sheriff's Sergeant; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

Complaints

7. **Esther Rosenberg**, Patient Services Specialist II, Health and Human Services Agency (HHSA), alleging disability, religion, and ethnicity discrimination by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See No. 8 below.)

Staff recommendation approved. Commissioner Pate assigned.

INVESTIGATIONS

Complaints

8. **Esther Rosenberg**, Patient Services Specialist II, HHSA, requesting a Civil Service Rule XI investigation into alleged improper personnel practices in the HHSA.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See No. 7 above.)

Staff recommendation approved.

9. **Nicole Weiss**, Emergency Services Dispatcher, Sheriff's Department, requesting a Civil Service Rule XI investigation into alleged improper personnel practices in the Sheriff's Department.

RECOMMENDATION: Deny Request.

Employee explained that her complaint re a hostile working environment due to conflict with another employee was investigated without integrity and with a predisposition by the Department. She further explained that she was afforded no recourse. She emphasized that this matter directly affects the merit basis of the personnel system.

Tom Reed, on behalf of the Department, assured the Commission that the formal investigation that was undertaken was fair and thorough. He further explained that the investigation was taken out of the Communications Center so that "fresh eyes" could give an objective view to the situation.

Larry Cook, Executive Officer, offered that staff's recommendation to deny Complainant's request in no way diminishes Complainant's emotional turmoil throughout this unfortunate situation. He questioned whether this matter should be before the Commission. However, he assured the Commission that a thorough investigation had ensued and that because the Department does not have a good remedy to offer Complainant, perhaps the

Commission could recommend to the Department to separate these two employees, to the extent possible.

Mr. Reed assured the Commission that there was a written directive, as well as oral, to keep these co-workers segregated during the investigation. He explained that the Communication's Center was quite large and it was possible for the employees to be on opposite ends of the Center. Mr. Reed offered that he and his staff are extremely sensitive to this situation.

Although accepting staff's recommendation, Commissioner Newman strongly advised the Department that tension among personnel be managed through shift assignment.

Motion by Newman to accept staff recommendation; seconded by Pate. Carried.

10. Barrett Foerster, Esq., on behalf of **Marian Modrak**, Deputy Public Defender IV, requesting a Civil Service Rule XI investigation into alleged improper operations of the Department of the Public Defender with respect to the preparation and issuance of Performance Appraisals. (See No. 18 below.)

RECOMMENDATION: Continue to the next meeting at the request of the Department of the Public Defender.

Staff recommendation approved. Continued.

SELECTION PROCESS

Complaints

11. **Larry D. Bullock**, Field Service Officer, Sheriff's Department, appealing his non-selection for the classification of Deputy Sheriff Cadet Detentions/Court Services by the Sheriff's Department.

RECOMMENDATION: Deny Request.

Appellant contends that since the filing of an Internal Affairs Complaint in 1998 concerning an incident that involved two Sheriff's deputies, he has been unsuccessful with the background portion of the selection process. He also sets forth erroneous information about a previous marriage, revealed during the course of a background investigation, that has since been corrected.

Tom Reed, on behalf of the Sheriff's Department informed the Commission that Mr. Bullock is not on a current employment list for Deputy Sheriff Cadet Detentions/Court Services and thus ineligible to compete in the current selection process. Most recently he was on the Corrections Deputy Sheriff Cadet list, which expired on September 20, 2001. Mr. Reed pointed out that documentation requested as part of the background check was not provided to the Department subsequent to the expiration of the list in September 2001. Currently there is a monthly recruitment process for Deputy Sheriff Cadet Detentions/Court Services. Appellant may take the written test, and if successful, have his name placed on an employment list. A new background investigation would then follow.

The Commission questioned whether Appellant was misled by the Department in that he felt he had only to clear up the marriage issue in order to pass the background portion of the selection process. Mr. Reed agreed that it was a fair assessment that Appellant did indeed believe the

marriage issue was the only obstacle.

The Commission, after discussion, opted to grant a hearing limited to an in camera review of the background investigation to verify the Department's justification.

Motion by Newman to grant a hearing limited to an in camera look at the background investigation; seconded by Dixon. Carried. Commissioner Pate assigned.

AYES: Newman, Dixon, Pate, Brummitt
NOES: Austin
ABSTENTIONS: None

Findings

12. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Nancy Brown**, Probation Aide, Department of Probation, appealing the Department of Human Resources' decision that she is ineligible to compete in the recruitment for the classification of Deputy Probation Officer.

FINDINGS AND RECOMMENDATIONS:

A hearing was conducted on June 13, 2002 in the appeal of Appellant regarding the Department of Human Resources' (DHR) determination that she does not meet the minimum qualifications to compete for the classification of Deputy Probation Officer. It became apparent at the beginning of the hearing that Appellant's primary issue was more directly related to classification, rather than selection process. Appellant's representative concurred, and stated that Appellant and others have submitted a reclassification request to their department.

Appellant opted to request that the Rule X selection process hearing be held in abeyance pending the outcome of the reclassification (Rule XII) process. It is therefore recommended that Appellant's appeal be held in abeyance pending the results of her reclassification request under the provisions of Civil Service Rule XII; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approved Findings, Conclusions and Recommendations (Interim Report); seconded by Brummitt. Carried.

13. **Nancylee Greiner**, appeal of removal of her name by DHR from the employment list for Correctional Deputy Probation Officer I.

14. **Ricardo F. Aquisap**, appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

15. **Claudia M. May**, appeal of removal of her name by DHR from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify Item Nos. 13-15. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 13-15 ratified.

OTHER MATTERS

16. Larry Cook, Executive Officer, Civil Service Commission, providing follow-up information and a recommendation to the Commission regarding

Vanessa Page, former Protective Services Worker I, HHSA, who requested the sealing of a Performance Appraisal for the period March 9, 2001 to September 9, 2001.

RECOMMENDATION: Assign a Commissioner to investigate under the provisions of Civil Service Rule XI.

Lynette Mercado, on behalf of the Agency, questioned the reasoning behind a Rule XI investigation since both parties have agreed to accept the resignation of Employee, in lieu of separation during probation.

Ralph Shadwell, Sr. Deputy County Counsel, responded that based upon his legal advice, staff recommended the Rule XI investigation. He explained that in personnel issues, the Commission needs a clear-cut road map to its actions. He advised that the Commission should not accept the agreement between HHSA and Employee without taking the matter under its jurisdiction of a Rule XI investigation. The issue of the sealing of the performance appraisal in question would be part of the Rule XI investigation.

Motion by Brummitt to accept staff recommendation; seconded by Pate. Carried. Commissioner Dixon assigned.

Seal Performance Appraisal

17. **Yvonne Daniels**, Departmental Personnel Officer III, HHSA, requesting the sealing of a Performance Appraisal for the period May 4, 2001 to November 4, 2001.

RECOMMENDATION: Grant Request.

Commissioner Newman requested that this matter be pulled for discussion. He reiterated that he is opposed to sealing of performance appraisals because it leaves a hole in the history of an employee's work record. The Commissioner also stated that a violation of procedure by a department does not justify a sealing. He feels that the Agency should call employee in to discuss this appraisal and remedy the violation of procedure.

Ralph Shadwell, Sr. Deputy County Counsel, advised that Commission does not have the authority to request a department to remedy a violation. He further advised that under Rule V, the Commission could undertake an investigation. The Commission can also order a sealing and request a new performance appraisal be prepared.

Motion by Dixon to approve staff recommendation; seconded by Pate. Carried.

AYES:	Dixon, Pate, Brummitt
NOES:	Austin, Newman
ABSTENTIONS:	None

18. Barrett Foerster, Esq., on behalf of **Marian Modrak**, Deputy Public Defender IV, requesting an investigation and sealing of a Performance Appraisal for the period November 18, 2000 to November 18, 2001.
(See No. 10 above)

RECOMMENDATION: Continue to the next meeting at the request of the Department of the Public Defender.

Staff recommendation approved. Continued.

Extension of Temporary Appointments

- 19. Health and Human Services Agency
 - A. 1 Recreational Care Worker Trainee (Shalene Thomas)
 - B. 1 Recreational Care Worker I (Calvin Bruner)
- 20. Department of Child Support Services
 - A. 1 Staff Development Coordinator (Linda Leicht)
 - B. 1 Departmental Budget Manager (Carol Fowler)
 - C. 1 Technical Writer (James Wingo)

RECOMMENDATION: Ratify Item Nos. 19 & 20.

Item Nos. 19 and 20 ratified.

- 21. Public Input.

ADJOURNMENT: 4:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JULY 3, 2002.